

**MINUTES
CITY OF PORT WASHINGTON
SPECIAL CITY COUNCIL MEETING
July 19, 2007**

A special meeting of the Common Council was called to order at 5:30 p.m. by Mayor Huebner in the Council Chambers. Council members present: Aldermen Al Haacke, Paul Neumyer, Jim Vollmar, Burt Babcock, Tom Hudson, Pete Jushka and Chris Ross. (Alderman Vollmar arrived at 5:42 p.m.) Also present: City Administrator Mark Grams and City Attorney Eric Eberhardt.

Consider Amending Premise Description For Liquor License Holders Within The Fish Day Grounds Area

Mayor Huebner asked that the meeting be run in an orderly fashion whereby Mr. Cooper and Mary Monday would speak first, followed by comments from the audience, which should be limited to 2 to 3 minutes.

Dennis Cooper, Horsefeathers Restaurant – Mr. Cooper spoke about providing expansion of his premises. He said that all he was asking is that we as a community do not aggravate customers that we bring to our City by limiting them from alcohol (beer) outside of his place. People don't understand that policy. He feels that it won't make a difference with the sale of beer or food. It has nothing to do with that. They don't understand why it's okay to walk around anywhere on the Fish Day grounds with a beer, but can't take it out of his place of business. He said he already stated to the Council that as far as alcohol is concerned, people would be stopped from taking that off his premise – that's very easy to police.

Mary Monday, Fish Day General Chairman – Gave a brief overview of the history of Fish Day and reasons needed to have Fish Day stands exclusively sell beer and food on the Fish Day Grounds. She said Fish Day was organized in 1964 and Fish Day, Inc. is an umbrella organization for our service organizations to do their largest fund-raising in 12 hours. Volunteers fuel this event. Fund-raising is done by Fish Day for non-profit organizations. The service and fraternal organizations contribute back to Fish Day, Inc. to help offset the extreme costs of producing such a festival to bring all these people to Port Washington by advertising the event so that the service clubs can raise money and put it back into our community to maintain and increase the quality of life in Port Washington. If the Council were to pass this request, Fish Day, Inc. would request that they be treated the same as the rest of the vendors. The service clubs ought to be applauded for all their hard work. Extra security and policing is also needed. One of the issues is where does liability play with this event? There are a lot of factors to consider. If the Council were to approve this, I would hope that Fish Day is not the only event that would have to have such an inclusion set upon them. I would ask the Council to respect the efforts of all these organizations and not pass this request.

Dennis Cooper, Horsefeathers Restaurant – As far as insurance is concerned, if someone gets hurt on our property, our insurance will take care of it. We donate to every organization in this town that comes to us. Again, it really isn't the issue of how much I'm going to sell or how much I'm going to take away from their sales; the issue is how are we treating the people coming into our community? That's the bottom line.

Jeff Brown, 254 E. Norport Dr., Leathernecks Club – Fish day is for charity. Any dollar taken away from us, we can't give away. Disagree with Alderman Ross's comments that the three businesses in the Fish Day grounds would not significantly reduce business with the stands. If a serious beer drinker doesn't like Miller Lite, he can go to Dennis's place and get a Budweiser.

Jim Olsen, 646 Sauk Drive, Kiwanis Club – Cautioning Aldermen that we spent the last 15 years plus cleaning up Fish Day making sure that it's a family event. There are a lot of other businesses that would like to have the same privileges that are afforded to the people who had the foresight to build in the Fish Day grounds.

Sue Bruner, Port Fish Day Treasurer – Have a question for Attorney Eberhardt and the Council. It's my understanding that it is illegal for "Class B" licensees in the City to allow open containers to be carried out of the licensed premises. I think Mr. Cooper is asking for an exception to this and if it's extended to him, then why shouldn't it be extended to every other "Class B" licensee in Port Washington?

Nancy Mersereau, 219 Summit Drive, member of the Board – I go back to the early days of Fish Day and the reason it's down on the lakefront was a request by the City and Police Department to move it off the downtown streets to make sure that it became the wholesome family entertainment it is today where we could control alcohol consumption.

David Tainter, 1027 W. Lincoln, Stands Chairman – One of my concerns is that we have to charge festival pricing on Fish Day and we charge \$3.50 for a 12 oz. beer, when people could get a bottle or tap beer for less.

Joe Eernisse, 250 Martin Drive, Past President, Rotary Club – No organization is asking Mr. Cooper to close down on Fish Day – all we're asking for is that he keep his business contained on his premise. The other two businesses on the Fish Day grounds don't have a problem with this.

Ellen Paulus, Advertising Director, Fish Day, Inc. – Pointed out that Fish Day is a festival and I don't know any other festival that would allow people to walk in and out with carryouts. Fish Day hires security to control what's coming in and out of that location. Would like to keep our patrons on the grounds and buying our products for our service organizations.

Karen Oleski, 415 Lake Street, Kiwanis Member – The money we take in, we give back to the community. It's all volunteer work. Help us out by saying yes to the community and no to the open carry.

Chuck Bennett, Yacht Club – I think Fish Day, Inc. does a fine job in organizing this event and controlling it. I don't know whether or not beer sales should be affected one way or another. I do know that we should create a level playing field. If the Fish Day Corporation provides the advertising, security, bands, etc., I see no reason why Horsefeathers or any of them couldn't participate if they went through that organization.

Dennis Ansay, Holden Street – If you open up for Mr. Cooper and the other two businesses on the Fish Day grounds, the same rules should be applied to all the bars in town.

Chuck Ellmauer, 231 Summit Drive, VFW, Fish Day Committee – If I owned a restaurant directly outside of the main gate on Fish Day, I would be very happy to be open that day to get a crowd like that. With the VFW, 85% of the profits earned on Fish Day are returned back to this community. Drive through the City and take a look at the parks, playground equipment, trees donated to the Park & Recreation Department, scholarships, etc. The vast majority of the money spent on this is donated by civic organizations. This needs to be addressed and taken into consideration.

City Attorney Eberhardt – Reviewed his memo regarding the background research he did in a phone conversation with Roger Johnson of the State Department of Revenue concerning the legalities of extending licensed premises. By granting this request, the Council would have to grant an amendment to his license, which would then cover the entire Fish Day grounds. Were you to grant what Mr. Cooper is requesting, thereby extending his licensed premise, he would be responsible legally and have an obligation to provide control and authority over the effects of his dispensing of alcohol to his patrons who then leave his immediate premise and go out onto his Fish Day extended premises and whatever happens to them would be his responsibility.

As far as insurance, I would disagree and challenge Mr. Cooper to check with his insurance carrier to see that if his request was granted and his license was amended to include the Fish Day grounds, that his current insurance policy would provide liability insurance coverage.

Conclusion: You may lawfully grant the sort of relief that Mr. Cooper is asking by amending his alcohol beverage license to include not only his currently licensed premise, but also the balance of the Fish Day premises that would facilitate what he would like to do. Legally you may do this by (1) require Mr. Cooper to file a written application to amend his liquor license to include the Fish Day grounds and (2) you may impose as many conditions as you deem appropriate consistent with this request. As your attorney, I remain concerned and think it's not a good idea for reasons mentioned and as stated in my memo to concede to this request. I also think there are some law enforcement considerations that exist.

Richard Thomas, Chief of Police and Kevin Hingiss, Lieutenant – Rather than take a specific position on this issue, we are here as a governmental body that is legislated to prevent crime, preserve peace and maintain order and to advise you that there are some very serious law enforcement considerations. There has been a tremendous effort by the organizations and the City to help minimize over consumption and we really appreciate that. Our security is based on what you did last year.

Alderman Babcock – The Council wanted to give Mr. Cooper a chance to speak, but there is not enough time to review all of this before Fish Day. **MOTION BY ALDERMAN BABCOCK, SECONDED BY ALDERMAN HUDSON TO TABLE THIS ITEM. Motion carried unanimously.** Alderman Hudson – I looked at this from a fairness standpoint. You want to do everything you can to help local businesses. However, I started looking at other issues, one of which was brought up with paying for security on the Fish Day grounds. If somebody else is going to join in with alcohol on the grounds, they should also share in the cost of that security. The City Attorney's memo was a big influence, as well as the insurance issue. I would like to see some accommodation down the road where maybe he could participate in the whole Fish Day process. I'm glad we had a meeting to discuss it to look at these issues. Alderman Haacke – Very pleased we had this meeting. I'm a firm believer that there is only one way to resolve an issue or concern and that is to get as much input as possible. He thanked Mr. Cooper for coming in to address this issue and thanked everyone else for their input. Alderman Ross – The purpose of the City Council is to make sure that it's a safe environment. I'm very pleased with the turnout tonight. Alderman Vollmar – Thanked everyone for the debate. I think the grounds are licensed by a permit to the Fish Day Committee and I think the Fish Day Committee would be the proper people to give permits to have beverages off the premise to the establishments that are within their boundaries. I think Mr. Cooper should work with the Fish Day Committee for putting on regulations that they feel appropriate.

Dennis Cooper, Horsefeathers Restaurant – I have no hard feelings. The reason I came here is because I don't think we should bring people here to irritate them, but now there are some legal issues that I need to get clarification on for the future.

Mayor Huebner – There are three restaurants affected by being on the Fish Day grounds. The Legion was called and they are fine with it. They provide their own security. New Port Shores also has security and asked that we revise their license area just for Fish Day to include a portion of his parking lot, in which he would fence in the area. Mayor Huebner thanked everyone for coming and for their input.

MOTION BY ALDERMAN JUSHKA, SECONDED BY ALDERMAN VOLLMAR TO APPROVE EXPANDING THE LICENSED PREMISES OF NEW PORT SHORES FOR FISH DAY TO INCLUDE A FENCED IN PORTION OF THE PARKING LOT. **Motion carried unanimously.**

MOTION BY ALDERMAN BABCOCK, SECONDED BY ALDERMAN JUSHKA TO ADJOURN THE SPECIAL CITY COUNCIL MEETING AT 6:35 P.M. **Motion carried unanimously.**